

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

LEROY LAMONT WELLS,

Plaintiff,

No. 2:16-cv-00758-JE

v.

MARK NOOTH, et al.,

ORDER

Defendants.

HERNÁNDEZ, District Judge:

Magistrate Judge Jelderks issued a Findings and Recommendation [28] on October 20, 2016, in which he recommends that this Court set aside his June 21, 2016 Order¹ [20], independently determine that Plaintiff is not entitled to *in forma pauperis* status, and deny as moot Plaintiff's pending Motion for Leave to Appeal *in forma pauperis* [26]. Additionally, Judge Jelderks recommends that this Court require Plaintiff to pay the \$400 filing fee should he wish to

¹ On October 20, 2016, the Ninth Circuit ordered that Judge Jelderks' June 21, 2016 be vacated because, as a magistrate judge, he lacked the authority to deny *in forma pauperis* status. See ECF 37-1.

continue with this case. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Plaintiff filed timely objections to the Magistrate Judge's Findings & Recommendation. ECF 32. Plaintiff also submitted additional "Supplemental Specific Written Objections," which this Court has considered. ECF 35. When any party objects to any portion of the Magistrate Judge's Findings & Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

Judge Jelderks recommends that this Court deny Plaintiff *in forma pauperis* status because he has a history of frivolous and meritless litigation. As noted in Judge Jelderks' June 21, 2016 Order, Plaintiff filed at least five lawsuits in this District in 2015 that were dismissed as frivolous or for failure to state a claim. This Court notes that, in 2015 and 2016 alone, Plaintiff has had at least five other lawsuits dismissed in this District for failure to pay a filing fee. See, e.g., 2:15-cv-02130-JE; 2:15-cv-02245-JE; 2:16-cv-00422-JE; 2:16-cv-00423-JE; and 2:16-cv-00582-JE.

Plaintiff's objections repeat the assertion put forth in his Complaint and in the other ten lawsuits mentioned above that this Court has reviewed—Plaintiff contends that his incarceration is unlawful. The Court has carefully considered Plaintiff's objections and concludes there is no basis to modify the Findings & Recommendation. Plaintiff's allegations regarding his incarceration are insufficient to overcome the "three-strikes bar," which prohibits prisoners from proceeding in a civil action without full prepayment of filing fees if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action in a court

of the United States that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g). The Court has also reviewed the pertinent portions of the record *de novo* and finds no other errors in the Magistrate Judge's Findings & Recommendation.

CONCLUSION

The Court ADOPTS Magistrate Judge Jelderks' Findings & Recommendation [28]. The Court vacates Judge Jelderks' June 21, 2016 Order [20]. The Court independently determines, for the reasons stated above and those stated in Judge Jelderks' Findings & Recommendation, that Plaintiff is not entitled to proceed *in forma pauperis*. Plaintiff's pending Motion for Leave to Appeal *in forma pauperis* on appeal [26] is denied as moot. Plaintiff is ordered to pay the \$400 filing fee should he wish to continue with this case. Failure to pay the fee within 30 days of this Order will result in dismissal of Plaintiff's case.

IT IS SO ORDERED.

DATED this 5 day of December, 2016.



MARCO A. HERNÁNDEZ
United States District Judge